



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

A-24745

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COMP. GEN.  
FILE COPY

OCT 13 1928

The Honorable,

The Secretary of the Interior.

Sir:

There has been received your letter of October 6, 1928,

as follows:

"The act of March 7, 1928 (Public No. 100) making appropriations for this Department for the current fiscal year contains items for expenditure by the Geological Survey for gauging streams and for the operation and maintenance of certain base-gauging stations.

"In carrying on the stream gauging activities it is necessary to erect gauging stations at various points and in connection therewith to erect structures from which discharge measurements are made.

"As a general rule property owners readily consent to the erection of such gauging stations, towers, etc., together with the privilege of ingress and egress. Occasionally, however, some property owner will demand payment of a lump sum, running from \$25 to \$100 for such privilege.

"The Geological Survey states that it would be preferable to make settlement on such basis rather than to enter into an agreement for one year with the necessity of renewal from year to year. It would appear desirable that the Government, prior to erecting such more or less permanent structures, procure right of way or lease for a number of years in order that it may be protected in its expenditures for such purposes and not be put at a disadvantage in dealing with private owners of the needed sites.

"I should be pleased to have your decision as to whether the current appropriation may be used to any extent to procure

such permanent privileges or rights of way, and if not, whether it will be permissible to enter into agreements with the owners for such privileges by paying a stipulated sum for the first year with the right of renewal from year to year upon payment of a nominal sum."

Section 3736 of the Revised Statutes provides:

"No land shall be purchased on account of the United States, except under a law authorizing such purchase."

The purchase of a permanent right of way or easement over land would constitute a purchase of land or interest therein in contravention of said section.

Section 3679, Revised Statutes, as amended by the act of March 3, 1905, 33 Stat. 1257, and the act of February 27, 1906, 34 Stat. 48, contains the following provision:

"No Executive Department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. \* \* \*"

It has been repeatedly held by this office, and by the courts, that a lease executed by or in behalf of the United States for a term of years, in the absence of specific statutory authority therefor, is binding upon the United States only to the end of the fiscal year with an option in the Government for renewal from year to year until the end of the term. 1 Comp. Gen. 10; Chace v. United States, 155 U.S. 489; Bradley v. United States, 98 U. S. 104; United States v. Boulant, 213 Fed. Rep.

729; and Smoot v. United States, 38 Ct. Cls. 412.

Answering your question specifically, I have to advise that you are not authorized to purchase a permanent easement or right of way nor to execute a lease for such an easement on behalf of the United States for a term in excess of one fiscal year, although a lease for the remainder of the fiscal year, at a reasonable price, is authorized, and may properly contain provisions for removal from year to year at the option of the United States at a stipulated rate which may be substantially less than the rent stipulated for the first period.

Respectfully,

(Signed) J.R. McCarl

Comptroller General  
of the United States.

